

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Xiang et al.
Title: SHALLOW TRENCH ISOLATION PROCESS AND STRUCTURE WITH
MINIMIZED STRAINED SILICON CONSUMPTION
Appl. No.: 10/755,602
Filing Date: 1/12/2004
Patent No.: 7,462,549
Grant Date: 12/9/2008
Examiner: Jack S. J. Chen
Art Unit: 2813
Conf. No.: 9549

Request for Reconsideration of Dismissal

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This is a request for reconsideration of the dismissal dated May 26, 2009 (hereinafter "Dismissal"). A fee was submitted with the original request for reconsideration of Patent Term Adjustment (PTA) of February 6, 2009. If a request for reconsideration is not appropriate, then this present request is a petition under 37 CFR sections 1.181, 1.182, and 1.183.

In the Dismissal, the PTO refuses to follow a decision of the United States District Court for the District of Columbia with regard to Patent Term Adjustment (PTA).

U.S. Patent Law, specifically 35 U.S.C. 154(b)(4)(A), provides:

"An applicant dissatisfied with a determination made by the Director under paragraph (3) shall have remedy by a civil action against the Director filed in the United States District Court for the

District of Columbia within 180 days after the grant of the patent. Chapter 7 of title 5, United States Code, shall apply to such action. Any final judgment resulting in a change to the period of adjustment of the patent term shall be served on the Director, and the Director shall thereafter alter the term of the patent to reflect such change."

Given that the above-quoted law expressly gives the United States District Court for the District of Columbia jurisdiction and authority over the PTO with regard to PTA, the PTO is not at liberty to not follow this District Court. Reconsideration of the Dismissal is respectfully requested on this basis.

In the interest of judicial and administrative economy and efficiency, it is respectfully requested that a decision on this present request for reconsideration be **deferred or delayed** until a final decision has been rendered in *Wyeth v. Dudas*, which is now on appeal at the U.S. Court of Appeals for the Federal Circuit, under Federal Circuit Docket No. 2009-1120.

Although Applicant believes that no fee is required, the Commissioner is hereby authorized to charge any additional fees which may be due to Deposit Account No. 19-0741.

Respectfully submitted,

Date

7-24-2009

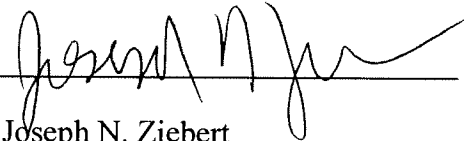
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